



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

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B-178353

August 31, 1973

Westinghouse Electric Corporation
1801 K Street NW.
Washington, D. C. 20006

Attention: John L. Howland, Counsel
Government Affairs

Gentlemen:

We refer to your letter dated April 3, 1973, and subsequent correspondence, protesting against the award of any contract under solicitation No. N00383-73-B-0434, issued by the United States Navy, Aviation Supply Office (ASO), Philadelphia, Pennsylvania, to a firm other than Westinghouse.

The ASO solicited bids for step-ladder quantities of Item 0001, an ultra-sonic cleaner, and for 4 separate data items as follows: Item 0002, technical manuals; Item 0003, engineering drawings; Item 0004, provisioning documentation; and Item 0005, unlimited rights in the engineering drawings being procured.

On March 29, 1973, the eight bids received in response to the solicitation were opened. The bidding order was as follows:

	<u>TOTAL AMOUNT OF BID FOR ALL 5 ITEMS</u>
Tronic Corp.	\$ 48,392.00
Westinghouse	60,180.00
	59,680.00 with waiver of First Article
Lewis Corp.	61,520.00
Phillips Mfg. Co.	64,680.00
Spectra Instrument	64,831.48
Spencer Industries	73,830.00
Wave Energy	94,596.08
Branson Instrument	138,400.00

You contend that the bid submitted by Tronic is incomplete and, therefore, nonresponsive. Specifically, you state that Tronic's failure to acknowledge Amendments 1 and 3 to the solicitation, its

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failure to execute a Jewel Bearing Certificate, its failure to furnish information on bid Item 0005, its failure to complete DD-Form 1423, and its failure to fill in the blanks provided under I-926 and I-928 of the "Inspection and Acceptance" clause of the solicitation requires a determination that Tronic's bid was nonresponsive. For the reasons set forth below, we do not agree with your contention.

It is well established that a bid which does not conform to the material requirements of a solicitation must be rejected as non-responsive. 36 Comp. Gen. 251 (1956). However, a nonconforming bid need not be rejected where the requirement involved is merely informational. 43 Comp. Gen. 166 (1963). Furthermore, an IFB requirement is not necessarily material because it is accompanied by a warning that failure to comply may result in rejection of the bid. 39 Comp. Gen. 595 (1960). Failure to comply with such an IFB requirement may be a minor informality or irregularity which may be waived pursuant to paragraph 2-405 of the Armed Services Procurement Regulation, which provides in pertinent part as follows:

"A minor informality or irregularity is one which is merely a matter of form or is some immaterial variation from the exact requirements of the invitation for bids, having no effect or merely a trivial or negligible effect on price, and no effect on quality, quantity, or delivery of the supplies or performance of the services being procured, and the correction or waiver of which would not affect the relative standing of, or be otherwise prejudicial to, bidders. The contracting officer shall either give to the bidder an opportunity to cure any deficiency resulting from a minor informality or irregularity in a bid, or, waive any such deficiency where it is to the advantage of the Government.* * *"

While it is true that Tronic failed to acknowledge Amendments 1 and 3, we do not believe these deficiencies were material. Amendment 1 extended the opening indefinitely and had no effect on price, quantity, quality or delivery of the ultra-sonic cleaners being procured.

Amendment 1 also corrected the number "0003" in the second line of Note 2, page 20 of the IFB, to "0005". Note 2, entitled "Information to be furnished under certain circumstances," states that bidders who elect to prorate the cost of Item 0005, unlimited

rights in data, over other items, must advise the Government of the cost for the data so spread over the other items in the space provided. Although Tronic did not fill in the space provided in Note 2, it did indicate in its bid in the appropriate space that it was not charging the Government for Item 0005. Since Tronic had no costs to prorate over other items, its failure to furnish the data required was merely an omission of an unnecessary informational item.

Amendment 3 merely established a new opening date. Since the bid submitted by Tronic was timely and since its failure to acknowledge the amendment had no effect on price, quantity, quality or delivery, we agree with the procuring agency's waiver of this deficiency as a minor informality.

Next you state that Tronic's bid was nonresponsive because Tronic failed to execute the Jewel Bearing Certificate required on page 8, clause B-210, of the solicitation. Although the certificate was not signed, Tronic did supply the information required in the certificate, and typed in the firm's name and its representative's name and title in the blank intended for the signature. Since Tronic's completed bid was signed by the named representative, we are of the opinion that Tronic fully complied with the requirements of this portion of the invitation for bids and would be bound by the terms of the Jewel Bearing Certificate.

We are also of the opinion that Tronic's failure to complete DD Form 1423 (Contract Data Requirements List) is a minor informality or irregularity which may be waived pursuant to ASPR 2-405. Our decision, B-169446, July 7, 1970, involved a protest against an award of a contract to Westinghouse for Westinghouse's failure to complete DD Form 1423. In sustaining the award to Westinghouse we noted that paragraphs 2 and 3 of the "Instructions for Completing DD Form 1423" on the reverse side of that form provided:

"2. The contractor agrees that, regardless of whether he has made any entries in Items 25 and 26, and regardless of what those entries are, he is obligated to deliver all the data listed hereon, and the price he is to be paid therefor is included in the total price specified in this contract.

"3. The estimated prices filled in Item 26 will not be separately used in evaluation of bids or offers."

We then stated:

"* * * Even if Westinghouse had submitted with its bid a completed DD Form 1423, any prices listed thereon would be estimates only, imposing no fixed-cost obligations on Westinghouse. However, since Westinghouse's bid indicated a price for the data called for in the invitation, this was sufficient for the purpose of evaluating its bid and Westinghouse is clearly obligated to furnish the data at its bid price therefor. Under these circumstances, we are of the opinion that the failure of Westinghouse to complete DD Form 1423 amounted to no more than a minor deviation which was properly waived in accordance with ASPR 2-405. See, also, B-161063(1) June 8, 1967."

Since Tronic's bid included a price for the data, we believe that the rationale of the above-cited decision as it applied to Westinghouse, applies equally to Tronic.

Finally, you state that Tronic's failure to fill in the blanks provided under I-926 and I-928 of the "Inspection and Acceptance" clause should have resulted in rejection of its bid as nonresponsive. These clauses requested certain information from the bidder concerning the items, such as whether they were being furnished from stock and whether they were to be furnished from Government surplus material. Also, the bidder was asked to supply the name of the principal manufacturer (not dealer) of the item and the location of the nearest public rail siding as well as the name of the rail carrier serving it. Tronic failed to provide this information with its bid.

However, the omitted information did not affect Tronic's obligation to deliver the items to the required destinations, nor did it affect the cost of transportation, both of which are governed by clause H-844 of the IFB as follows:

"(a) * * * the articles of each line item to be furnished hereunder shall be delivered FOB destination, to the activity, or activities, set forth after each such line item in the quantity indicated for each such activity."

Consequently, the bid prices included the transportation costs to the destination cited. Since Tronic's failure to provide the information requested in clauses I-926 and I-928 did not affect price, quality, quantity or delivery, we would not be justified in objecting to the procuring activity's waiver of this deficiency in its bid.

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In response to your inquiry whether the contracting officer has sought verification of the Tronic bid price, we note that Tronic confirmed its bid prices by a letter to the procuring activity dated April 30, 1973.

For the foregoing reasons, your protest is denied.

Sincerely yours,

Paul G. Dembling
For the Comptroller General
of the United States